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HIGH COURT OF CHHATTISGARH: BILASPUR

WRIT PETITION (S) NO. 153 OF 2007.

PETITIONER — Saugat Banerjee

Versus

RESPONDENTS — Vivekanand Vidyapeeth and others

POST FOR ORDER 30 -7-2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (s) No. 153 of 2007

Petitioner		Saugat Banarjee S/o Shri S.C. Banerjee, Aged about 33 years, Occupation-Tabla Teacher, Vivekanand Vidyapeeth Ramkrishna Paramhansa Nagar, Kota, Raipur R/o Shivanand Nagar, Sector-3 p.o. WRS, colony, Raipur
	Versus	
Respondents	1.	Vivekanand Vidhyapeeth, Through, Secretary, Ramkrishna Paramhansa Nagar, Kota, Raipur (C.G.)
	2.	Shri O.P. Verma, Secretary, Vivekanand Vidyapeeth, Ramkrishna Paramhansa Nagar, Kota, Raipur (C.G.)
	3.	State of Chhattisgarh Through the Collector, Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

(SB : Hon'ble Shri Justice **Satish K. Agnihotri)**

Present :

Miss Deepali Pandey, Advocate for the petitioner.
Mr. Jitendra Pali, Advoate for the respondents No. 1 and 2.
Mrs. Anju Anju Ahuja, Dy. Govt. Advocate for the respondent No. 3/State

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ORDER

(Passed on this 30th day of July, 2007)

1. By this petition, the petitioner challenges the legality and validity of the show cause notice dated 25.11.2003 (Annexure P/1) calling upon the petitioner to file his response to the alleged 8 charges within a period of 10 days. The petitioner was further called upon to make it clear if the petitioner wants personal

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hearing. The petitioner further impugns the second notice dated 30.12.2005 (Annexure P/2) calling upon the petitioner to explain asto why the disciplinary action be not taken against him for refusing to accept the charge-sheet dated 25.11.2003 and further declining to accept the charge-sheet sent by the registered post.

2. The case of the petitioner is that the petitioner was appointed as contingency paid Tabla Teacher on 29.9.1997 in the respondent No. 1 Institute, however, no letter of appointment was supplied to him. The respondent No. 1 Institute is fully aided by the Government. There are 64 regular posts and 25 contingency paid posts sanctioned for the payment of grants by the State Government. The petitioner, having been appointed against the vacancy of regular post, is eligible for regularization. However, the petitioner was getting his salary at the Collector's rate. There are certain allegations against the respondent No. 2. In particular that the respondent No. 2 demanded a sum of Rs. 25,000/- for getting the petitioner regularized and with regard to financial and other irregularities committed by the respondent No. 2, an enquiry is pending consideration.

3. The respondent No. 2 issued a show-cause notice on 25.11.2003 without obtaining approval of the Managing Committee. Thereafter, one more letter dated 30.12.2005 was also issued against the petitioner unauthorizedly. The petitioner submits that the service condition of the petitioner is governed by the Vivekananda Vidyapeeth, Raipur, Services Rules, 2004 (Annexure P/7) (hereinafter referred to as 'the Rules, 2004') which came into force with effect from 17.2.2004.The petitioner has pointed out certain in-consistencies in the Rules 2004, being

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not in consonance with the provisions of the Madhya Pradesh Ashaskiya Sikshan Sanstha (Adhyapakon Thatha Anya Karmachariyon Ke Padachyut Karne/Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983 (hereinafter referred to as 'the Niyam, 1983') & Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Thatha Anya Karmachari) Appeal Rules, 1978 (hereinafter referred to as 'the Appeal Rules, 1978'). The petitioner further submits that the petitioner filed an application under section 31(3) read with Section 61 of the Industrial Disputes Act, 1960 before the Labour Court, wherein the Labour Court vide order dated 4.11.2006 granted status quo in respect of the petitioner. The said application was later on withdrawn by the petitioner.

4. Being aggrieved, the petitioner has filed this petition seeking following reliefs:

> "7.1 That, this HON'BLE COURT may kindly be pleased to issue a writ of CERTIORARI quashing the entire disciplinary proceeding as per the order dated 25/11/2003 and 30/12/2005.
>
> 7.2 That the HON'BLE COURT be pleased to direct the respondents to conduct the disciplinary proceeding in accordance with law if any.
>
> 7.3 That, the HON'BLE COURT be pleased to pass any other direction/order after evaluating the facts & grievances of the petitioner."

5. Learned counsel appearing for the petitioner would submit that the case of the petitioner is governed by the provisions of the Rules, 2004 framed and approved by the Board of Trustees of Vivekanand Vidhyapeeth, Raipur, which came into effect from 17-2-2004. Thirdly, appointment of an Advocate is beyond the

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provisions of law as per the law as the enquiry officer can be divisional superintendent of education only. The Principal of the school ought not have been appointed presenting officer. The entire action of respondent No.2 is actuated by ill-will and malice on the part of respondent No.2 towards the petitioner. The arbitrary action of the respondent No.2 has seriously effected the present and future prospects of the career of the petitioner.

6. Shri Jitendra Pali, learned counsel appearing for the respondent No. 1 and 2, would submit that the entire writ petition is on the basis of misconceived facts. The appointment of the petitioner as contingency paid employee on the payment at Collector's rate is not an appointment in the eyes of law and the same is not in accordance with the Niyam, 1983 and the Appeal Rules, 1978. The payment of the petitioner is made by the Institute, not from the grants in aid received from the Government, as it is evident from bare reading of the letter dated 21.7.99 (Annexure P/4). There was no direction to regularize the services of the petitioner. The allegation of payment of Rs. 25,000/- is without any basis.

7. Looking into the reliefs sought by the petitioner, the provisions of the Rules, 2004 framed by the Vivekanand Vidyapeeth is not in question, as being not in consonance with the Niyam, 1983 and the Appeal Rules, 1978, in this petition. Even otherwise, Rule 12 of the Ashaskiya Sanstha Anudhan Niyam, 1985 (hereinafter referred to as "Niyam, 1985") provides that the Managing Committee shall have jurisdiction to suspend or to impose any punishment on an employee. Against the decision of the Managing Committee, appeal lies to the Collector.

8. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto. It is evident that the appointment of the petitioner as contingency paid employee is covered under the grants-in-aid made by the State Government as per Annexure P/4) memo dated 21-7-1999 wherein twenty five employees on contingency paid at Collector's rate in the respondent No.1 institute, is covered under the grants-in-aid granted by the State Government. With regard to the initiation of enquiry against the petitioner, the allegation of the petitioner is that the entire exercise done by the respondent No.2 is actuated by malice or ill-will towards the petitioner is not based on any documents and other relevant materials. There is nothing to establish the allegation, except the self same statement of the learned counsel appearing for the petitioner. On reading of the various provisions, it appears that the case of the petitioner is governed by the provisions of the Niyam, 1983. Any Rule framed by the Vidhyapeeth Trust, if the same is contrary to the provisions of the Niyam 1983, may not be applicable as the institute is Government aided institute. The Niyam 1983 made by the State Government in exercise of the powers conferred by sub clause (i) of clause (e) of sub-section (2) of Section 10 read with sub-clause (iii) of clause (a) of Section 6 of Adhiniyam 1978 specially provides procedure for removal of teachers and other employees working in the Government aided institute. Thus, the provisions of the Niyam, 1983 would be applicable or any other provisions made by the Vidhyapeeth Trust which are supplemental in nature. The Niyam 1983 clearly provides for issue of show cause notice, issue of charge-sheet, appointment of enquiry

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officer, enquiry, report of Enquiry Officer, record of enquiry, consideration by management and decision of the management. It appears that the respondents No. 1 and 2 have not followed the provisions of law as mentioned hereinabove. The Niyam 1985, which deals with grants-in-aid to the non-Government institutes, does not deal with the specific provisions. It appears that the Rules 1985 are general rules and Niyam 1983 are special rules dealing with the provisions for removal of the employees working in the non-government aided institutes. The Niyam 1983, being special rules, will have overriding effect over the general Niyam 1985. The Niyam 1985, as brought before me, does not disclose the source of power and the same is issued by the Department of Tribal Welfare. The authenticity of the said Niyam 1985, is in question. Learned counsel appearing for the respondents No. 1 and 2 has cited several decisions with regard to the interpretation of statues which are not relevant in the dispute involved in the case on hand. Thus, it is not necessary to deal with each and every case on interpretation of statues in this case.

9. Admittedly, the petitioner working as contingency paid Tabla Teacher in the respondent No. 1 Institute. In order to satisfy fair-play in action and principles of natural justice, it is necessary that there should be a proper enquiry, affording sufficient opportunity of hearing to the alleged delinquent employee.

10. On perusal of the impugned notices dated 25.11.2003 and 30.12.2005, it appears that the authorities have framed the charges, details have been submitted and the petitioner is given full opportunity to file his response on the said charges. The petitioner ought to have explained before the authorities that no

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other person, except the Divisional Superintendent of Education can be appointed under the provisions of law. It appears that the petitioner instead of filing a response to the respondent No. 1 Institute for change of an enquiry officer and the appointment of the Divisional Superintendent of Education as enquiry officer straightaway rushed to this Court seeking relief in the nature of quashing the impugned orders.

11. It is trite law that the High Court has limited jurisdiction in so far as interference in departmental enquiry is concerned.

12. The Supreme Court in the case of **State of Punjab Vs. V.K. Khanna and others and other connected matter** (2001) 2 SCC 330 observed as under:-

> "33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly by delved into by any court pending enquiry but it is equally well settled that in the event there is an element of malice or mafa fide, motive involved in the matter of issue of a charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that even law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official....."

13. Applying the well settled principle of law to the facts situation of the present case, I am of the considered opinion that the purported departmental enquiry against the petitioner was not initiated in accordance with the provisions of law as stated hereinabove. Thus, the respondents No.1 and 2 are directed to initiate the departmental proceedings from the stage of submission of written explanation in accordance with law.

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14. As a result and for the foregoing reasons, the petition is allowed in part and the respondents are directed to complete the enquiry as per direction given in para No.13.

15. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge